

Committee on Resources,

Subcommittee on Energy & Mineral Resources

[energy](#) - - Rep. Barbara Cubin, Chairman

U.S. House of Representatives, Washington, D.C. 20515-6208 - - (202) 225-9297

Witness Statement

Testimony Submitted on September 4th, 2001
COMMITTEE ON RESOURCES
Subcommittee on Energy & Mineral Resources
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Hearing on September 6th, 2001 on
The Orderly Development of Coalbed Methane Resources from Public Lands

Madam Chair and members of the subcommittee on behalf of myself and the Powder River Basin Resource Council I would like to thank you for the opportunity to speak to you about coalbed methane or CBM development. My name is Ed Swartz, I am a third generation rancher, who has successfully operated a cattle ranch in Wyoming's Powder River Basin. I hope to pass this ranch onto my son and grandson to continue operating this great ranch, unfortunately, myself and other ranchers and landowners in the Powder River Basin are facing very real and destructive impacts from CBM development. The Powder River Basin of Wyoming is, according to industry, the site of the largest gas development in the country. Unfortunately, there has been nothing orderly about this development, with the possible exception of the collection of revenues. While I and fellow ranchers have faced bad economic times, drought and other mining booms, nothing has presented the kind of challenges and damaging impacts to our soil, water and lifestyle as the CBM development.

While this hearing is entitled the, "Orderly development of coalbed methane on public lands" you must understand it is not that simple. In my experience, it is rare to have the same entity owning both the surface and the mineral rights. This includes the federal government. This split estate issue of different owners of the surface and minerals is the root of many problems and inherently inhibits orderly development. We have many cases where private lands overlie federal minerals, in a few cases we have public minerals under public lands, and we have many cases where the minerals are owned by one individual and the surface by another. And finally what seems to be the minority, private minerals owned by same person who owns the surface. These various situations can exist adjacent to each other and cause overlapping impacts. Again, trying to proceed with orderly development on this foundation is an oxymoron.

Let me explain. First off, some background. The Powder River Basin Resource Council was founded 29 years ago by myself and other ranchers threatened by the rapid expansion of strip mining and the proposal for several mine mouth coal fired power plants. We joined together to protect our land, water

and air from the potential abuses and impacts of coal strip mining. At that time, in 1973, many landowners and citizens around the country were at the mercy of individual coal companies that desired to develop the coal beneath our property. We, along with landowners from other states, banded together to educate and work against the innumerable cases of unconscionable land abuse and destruction at the hands of unregulated coal-mining companies. Our efforts, and the leadership of many elected officials, lead to the passage of the Surface Mining Control and Reclamation Act. The promulgation of SMCRA was the beginning of land bonding, environmental reclamation, a comprehensive mine permitting system, and most importantly, rational control and the orderly development of coal mine operations to mitigate effects on land, surface and groundwater, and land owners.

Today, surface owners and citizens of the Powder River Basin and other states where coalbed methane development is occurring, or will soon occur, are again at the mercy of an under regulated and uncontrolled mineral development industry. Furthermore, coalbed methane development, which requires the dewatering of freshwater aquifers, is proceeding with minimal understanding of its long-term consequences and with little regard by either State government or industry for its short-term side effects. Unfortunately, most of industry will not regulate itself and those companies that are willing to do the development in more responsible ways that will not damage the land and water resources of the surface owner or neighbor are penalized in the economic arena by companies that are cutting corners. Coalbed methane companies are not required to maintain adequate bonds that would cover the costs of reclamation of the surface or water, despite the fact that we have thousands of miles of new roads bulldozed across the prairie, the spread of noxious weeds, the construction of hundreds of noisy compressor stations, thousands of miles of gas pipelines, and hundreds of miles of new powerlines. Incidentally, we have over 80 companies in the CBM production business in the Powder River Basin.

We also have the construction of large reservoirs that are damming up natural drainages which impede the flow of natural runoff used for irrigation. We also have severe erosion, salinization and ruination of soils from the discharge of millions of barrels of water a day to extract the gas. To this, I can personally attest as I have had the creek upstream dammed by several reservoirs. Consequently, the soils in the creek bed on my ranch are now loaded with salt deposits, which killed the vegetation in the creek and eroded the creek bed. This is now threatening to destroy my hay meadows. Without the hay meadows I do not have a viable ranching operation and I am not the only landowner in this situation. According to the state of Montana DEQ in a letter dated January 2, 2001 to the Wyoming DEQ, each CBM well in the Powder River Basin produces an average of 20 tons of salt a year.

Furthermore, regarding water quantity issues, we do not understand the long-term impacts of the depletion of the aquifers the industry is pumping from in order to extract the gas. Most of us in the Powder River Basin rely completely upon these aquifers for stock, wildlife and domestic water supplies. As of March of this year, according to the Wyoming Oil and Gas Commission, there were just over 44 million barrels of water per month being discharged (42 gallons in a barrel of water). According to the Coal Bed Methane Coordinator, that is enough water to supply 300,000 people per day which would be 2/3 of Wyoming's population or 2.5 million cows per day. This is water that we are pumping out and letting run away. Yes, this is water that is suitable for livestock and wildlife and for people who are not on a sodium restricted diet. In fact, it is water that most of us in the Powder River Basin rely upon for stock and domestic water. The problem comes when you start to dump this water on the surface on our clay soils and in our drainages and streams. It does not mix well with the soil and hay, trees and native grasses are destroyed.

Where are the protections for those of us bearing the brunt of the impacts for the development of

this energy? The extraction of coalbed methane development is mostly experimental and the Powder River Basin has actually been referred to by industry representatives as a laboratory. Why should we, who call this place our home be guinea pigs? We are watching our homes and ranches transformed into an industrial gas field. There are about 14,000 CBM wells permitted, around 6,000 producing and the BLM predicts up from 80,000 to 100,000 wells by 2010. The development of CBM is primarily being carried out on the backs of landowners that have essentially no say in how the development can proceed. We are being required to sacrifice our ranches, our water resources, our soil, our privacy, the wildlife – which also provides an income to many landowners - and our livelihoods.

As I mentioned before, the two groups of landowners that are primarily adversely affect by CBM development are: 1.) The surface estate landowners who do not own the minerals beneath their land; and 2) Adjacent or downstream landowners who have no legal tie to the resource being extracted or the surface of the land where the extraction is taking place. The natural runoff water that traditionally flowed through our land is now oftentimes impeded and impaired by the discharge of CBM water and our soils and land are being damaged by the CBM discharge water.

The direct, indirect and potential impacts to landowners is requiring us to spend thousands of dollars on attorneys and experts to try and protect our property. Currently, under the federal law there is no obligation to compensate the surface owner for the reasonable use of an easement that must be given by the surface owner. Even if the oil and gas operation causes substantial damage to the surface estate, in most jurisdictions in the West there is no obligation for adequate compensation by the gas company to the surface owner. A landowner must show excessive, wanton or negligent use of the easement by the gas developer, which means thousands of dollars in attorney fees. As a matter of justice and fairness, no oil and gas development should occur until the surface owner has given his/her written consent.

While the current practice by CBM companies is to generally get a surface use and damage agreement signed with the landowner that will preclude legal action down the line, how good that surface agreement is depends on how much the landowner knows, how good their lawyer is and how much money they have to pursue the issue in court. Those who have the money and knowledge might get a fairly good agreement while those who don't will not. The point being there is no governmental oversight to require an agreement that protects the rights of the surface owner. Various states have varying requirements for surface damage payment but there is not an overlying requirement by the federal government. In the West, the mineral estate seems to be granted more dominance allowing the gas developers far greater rights than is necessary to develop the resources. What is needed is a federal protection that requires the industry to act in a disciplined and fair manner: requiring landowner consent, the negotiation of a surface use and damage agreement from the surface owner and prohibiting impacts to downstream or adjacent landowners.

The immediate benefits being reaped from the coalbed methane industry are obviously not to be ignored. From the individual mineral owner to the local merchant to county, state and federal governments, the prosperity from gas development is being widely enjoyed. And yes, it is clean energy for urban areas – unfortunately, the production end in rural areas is not clean. We should not let the glitter of ten to twenty years of affluence blind us to the impacts and damages being felt very directly by others that are not reaping the benefits. We should also not let it blind us to the long-term impacts that we will be paying down the road. Coalbed methane is finite, and with the end of our reserves come the end of the boom. The faster we allow industry to develop, the quicker we'll be suffering the bust!

Despite industry claims that the Surface Mining Control and Reclamation Act (SMCRA) would put the mining industry out of business, the set of controls and regulations the Act encompasses have

insured surface owner protection and environmental reclamation. Meanwhile, Wyoming's coal mines continue to set production records to this day. Incidentally, the coal mines cannot just discharge their water they pump out of the pit, the same water as CBM discharge water, into creeks and drainages. This is just one example how the coal industry must conduct their operations to ensure environmental protection and reclamation. We need a similar set of regulations and controls, including equitable and realistic bonding, limitations on water discharge, treatment of low quality water, and requirements for reclamation for the coalbed methane industry. At the very least, we will probably need a fund established like the Abandoned Mine Lands Fund for messes that will be left to clean up.

A set of rules to insure that coalbed methane development is maximized as a beneficial industry for the United States and controlled to preclude its potential problems to the people living with the development is only logical, fair and just. We hope and believe there is a way to proceed slowly, thoughtfully and scientifically with the development of CBM gas. We need you as leaders to step up to the plate and address the failures in current laws and regulations and provide the protections for surface owners and safeguards for land, air and water resources impacted by coalbed methane development.

Thank you again for this opportunity to testify on this important issue.

The Powder River Basin Resource Council is a grassroots, membership based organization in Eastern Wyoming. Founded in 1973 our mission is, The preservation and enrichment of our agricultural heritage and rural lifestyle; The conservation of our unique land, minerals, water and clean air consistent with responsible use of these resources to sustain the livelihood of present and future generations; and the education and empowerment of our citizens to raise a coherent voice in the decisions that will impact Wyoming residents' environment and lifestyle.

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